184

No. 10-828

Supreme Court, U.S.
FILED
MAR 17 2011
OFFICE OF THE CLERK

In The
Supreme Court of the United States

MICHAEL MEAD,

Petitioner,

v.

CITY OF COTATI, a municipal corporation, PLANNING COMMISSION OF THE CITY OF COTATI, UNITED STATES FISH AND WILDLIFE SERVICE, DONALD KOCH, In his official capacity as Director of the California Department of Fish And Game,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION OF CITY OF COTATI AND PLANNING COMMISSION OF THE CITY OF COTATI TO THE PETITION FOR WRIT OF CERTIORARI

RICHARD R. RUDNANSKY
JULIA L. BOND
DAWN A. MCINTOSH
Counsel of Record
MEYERS, NAVE, RIBACK, SILVER & WILSON
333 South Grand Avenue, Suite 1670
Los Angeles, CA 90071
Telephone: (213) 626-2906
Facsimile: (213) 626-0215
E-mail: rrudnansky@meyersnave.com
E-mail: dmcintosh@meyersnave.com

Attorneys for Respondents City of Cotati and Planning Commission of the City of Cotati

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Should the takings test set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) be expanded beyond the limited context of adjudicative land-use decisions conditioning approval of development on the dedication of property to public use to apply to all generally applicable legislative conditions imposed by local governments?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	5
I. THE PETITION MISCHARACTERIZES THE HOLDING OF THE NINTH CIRCUIT AND THE ISSUES PRESENTED BY THIS CASE	5
II. PETITIONER GROSSLY OVERSTATES THE NATIONAL SIGNIFICANCE OF THIS CASE	12
CONCLUSION	15

TABLE OF AUTHORITIES

Page

CASES

Andrus v. Allard, 444 U.S. 51 (1979) 8

City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) 10, 12

City of Olympia v. Drebick, 156 Wash.2d 289, 126 P.2d 802 (Wash. 2006), *cert. denied*, 549 U.S. 988 (2006) 13

Dolan v. City of Tigard, 512 U.S. 374 (1994) ..... *passim*

Ehrlich v. City of Culver City, 12 Cal.4th 854, 911 P.2d 429 (Cal. 1996), *cert. denied*, 519 U.S. 929 13

Home Builders Ass'n of Central Arizona v. City of Scottsdale, 187 Ariz. 479, 930 P.2d 993 (Ariz. 1997), *cert. denied*, 521 U.S. 11209 14

Krupp v. Breckenridge Sanitation District, 19 P.3d 687 (Colo. 2001) 14

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005) ..... *passim*

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 8

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) 8

McCarthy v. City of Leawood, 257 Kan. 566, 894 P.2d 836 (Kan. 1995) 14

McClung v. City of Sumner, 548 F.3d 1219 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 2765 (2009) 8, 10, 11

TABLE OF AUTHORITIES – Continued

Page

Nollan v. California Coastal Commission, 483 U.S. 825 (1987) ..... *passim*

Penn Central Transp. Co. v. City of New York, 438 U.S. 104 (1978) 8, 9, 11

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922) 8

Sea Cabins on Ocean IV Homeowners Ass'n, Inc. v. City of North Myrtle Beach, 345 S.C. 418, 548 S.E.2d 595 (S.C. 2001) 14

Smith v. Town of Mendon, 4 N.Y.3d 1, 822 N.E.2d 1214 (N.Y. 2004) 13

Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 216 F.3d 764 (9th Cir. 2000), *aff'd*, 535 U.S. 302 (2002) 12

Town of Flower Mound v. Stafford Estates Ltd. Partnership, 135 S.W.3d 620 (Tex. 2004) 13, 14

Trimen Development Co. v. King County, 124 Wash.2d 261, 877 P.2d 187 (Wash. 1994) 13

Twin Lakes Development Corp. v. Town of Monroe, 1 N.Y.3d 98, 801 N.E.2d 821 (N.Y. 2003), *cert. denied*, 541 U.S. 974 (2004) 13

Waters Landing Ltd. Partnership v. Montgomery County, 337 Md. 15, 650 A.2d 712 (Md. 1994) 14

West Linn Corporate Park, L.L.C. v. City of West Linn, 349 Or. 58, 240 P.3d 29 (Or. 2010) 15

Williamson County Regional Planning Com'n v. Hamilton Bank, 473 U.S. 172 (1985) 4

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This case involves an ordinance of the City of Cotati, California ("the City" or "Cotati") which requires residential developers in the City to provide 20 percent of their units at an affordable price for moderate- and low-income households. Pet. App. E. If a proposed project involves nine units or fewer, the developer may choose to pay an in-lieu fee instead. *Id.* at p. E-5. Petitioner Michael Mead was fully aware of the City's affordable housing requirements when he submitted an application to develop eight units on a lot in the City, but he has never complied with these requirements. He first asked the City Planning Commission to waive the requirement, then filed this litigation alleging a Fifth Amendment Taking when his request was denied.

Respondents respectfully submit that this Court should not grant review. There is no conflict between state courts of last resort on the actual issue presented in this case – whether a generally applicable legislative regulation that applies to all residential developers in the City and does not require a dedication of property or a fee in lieu of a dedication is a land-use exaction subject to the limited takings test set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Petitioner's attempts to recast and distort the issues and craft a division among state courts of last resort are designed to create the illusion of a significant national issue which is simply not presented by

this case. The Ninth Circuit's ruling is completely consistent with this Court's body of takings jurisprudence, recently addressed in *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005). The Petition for a Writ of Certiorari should be denied.

STATEMENT OF THE CASE

On or about September 2006, Petitioner Michael Mead applied to the Planning Commission of the City of Cotati for a permit to build four duplexes for a total of eight residential units. ER, Vol. 2, Tab 3, Complaint, p. 0053, ¶ 12. A few days before the Planning Commission hearing on his application, Petitioner sent a letter to the Planning Commission asking it to waive one of the "Conditions of Approval" in Exhibit A to the Planning Commission's Resolution, Condition 8 which requires Petitioner to mitigate for impacts to the California Tiger Salamander, a state and federally protected species,[1] and to waive the provisions in the City's zoning ordinance which requires residential developers to provide a percentage of units that would be affordable for moderate- to low-income households. ER, Vol. 2, Tab 3, Complaint, p. 0055, ¶ 19. By Resolution No. 08-05 dated January 28, 2008 ("the Resolution"), the Cotati Planning Commission approved Petitioner's project, but it did not

[1] The Petition does not seek review of the Ninth Circuit's decision rejecting Petitioner's challenge to Condition 8 for the California Tiger Salamander based on ripeness grounds.

waive Condition 8 or the City's affordable housing requirements. ER, Vol. 2, Tab 3, Complaint Exhibit F, Resolution, pp. 0098, 0100.

Petitioner did not appeal this decision to the City Council. Instead, several months after his project was approved, he sent a letter to the City complaining that the affordable housing requirements constituted a taking of his property under *Nollan*, 483 U.S. 825, and *Dolan*, 512 U.S. 374.[2] ER, Vol. 2, Tab 3, Complaint Exhibit G, pp. 0109-0112. The City rejected Petitioner's allegation and explained that the affordable housing requirements were not an exaction and were not subject to *Nollan/Dolan* review. ER, Vol. 2, Tab 3, Complaint Exhibit H, pp. 0115-0116. The City also pointed out that Petitioner's claim was barred because he had failed to file a timely appeal of the Planning Commission's decision to the City Council and, as a result, had failed to exhaust his administrative remedies or ripen his takings claim. *Id.*

The affordable housing ordinance allows a residential developer such as Petitioner to either provide 20 percent of the proposed units restricted for occupancy by moderate- to low-income households, or, if the proposed development has nine or fewer units, he could elect to pay an in-lieu fee instead. Pet. App. E, E-2 to E-5. The ordinance does not require a developer to dedicate property to the City. Pet. App. E.

---

[2] Petitioner also raised challenges to Condition 8, but those will not be addressed here since Petitioner has not sought review of the Ninth Circuit's ruling on that issue.

After another round of letters on the same issues, Petitioner filed a complaint in the United States District Court for the Northern District of California seeking declaratory and injunctive relief, but not compensation, for an alleged Fifth Amendment taking and other constitutional allegations. ER, Vol. 2, Tab 3, Complaint, pp. 0065-0066. The District Court found Petitioner's claims were not ripe for review because he had not satisfied either prong of the ripeness test established by this Court in *Williamson County Regional Planning Com'n v. Hamilton Bank*, 473 U.S. 172, 187-188 (1985). Under *Williamson County*, a takings claim is not ripe until (1) the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue and (2) the plaintiff has sought compensation through the procedures the state has provided. *Id.* at 186-187. The District Court found that the second prong of this test was clearly not met because Petitioner had admittedly not sought compensation through state procedures. Pet. App. B at B-15 to B-21. The Court also noted in a footnote that the affordable housing requirements were not an exaction. Pet. App. B at B-30 n. 9.

Petitioner appealed to the Ninth Circuit. The Court of Appeals assumed the case was ripe in order to reject Petitioner's takings claim on the merits. Pet. App. A at A-4. The Court explained that Petitioner had multiple options for complying with the City's affordable housing requirement, one of which was to pay an in-lieu fee. The Court then held that a

generally applicable development fee is not an adjudicative land-use exaction subject to the *Nollan* and *Dolan* tests. Pet. App. A at A-4 to A-5. The Court of Appeals opinion is unpublished.

On December 21, 2010, Petitioner filed a petition to seek review from this Court on only his takings claim pertaining to the City's affordable housing ordinance. Petition, p. i.

REASONS FOR DENYING THE PETITION

I. THE PETITION MISCHARACTERIZES THE HOLDING OF THE NINTH CIRCUIT AND THE ISSUES PRESENTED BY THIS CASE

Petitioner misconstrues the decision of the lower court and the legal framework of this case in an attempt to meet the threshold requirements for review by this Court. This case does *not* involve an exaction or a required physical dedication of property by a governmental entity. Petitioner is a residential developer whose development proposal was approved by the City subject to his compliance with the City of Cotati's affordable housing regulations, generally applicable legislative regulations that apply to all residential developers in the City. ER, Vol. 2, Tab 3, Complaint, p. 0055, ¶ 21.

The City's affordable housing provisions are designed to implement the Housing Element of the City's General Plan, to offset the demand on housing created by new development, and to mitigate the

environmental and other impacts that accompany new development by protecting the economic diversity of the City's housing stock, by reducing traffic, transit and related air quality impacts, by promoting jobs/housing balance and by reducing the demand placed on transportation infrastructure in the region. Complaint Exhibit A, Affordable Housing Requirements, Section 17.31.010 – Purpose, Pet. App. E at E-1 to E-2; SER, Vol. 3, Tab 2, RFJN Exhibit F, Ordinance No. 766, ¶ 26, p. 0250. Pursuant to Section 17.31.020, each residential development shall be designed and constructed to provide at least 20 percent of the total units as inclusionary units restricted for occupancy by moderate-, low- or very low-income households. Pet. App. E at E-2. This Section does not require a developer to dedicate the affordable units to the City, but simply to offer them for sale or rent at an affordable price. Section 17.31.050 provides an alternative process of payment of an in-lieu fee for residential developments of nine or fewer units such as Petitioner's proposed project. *Id.* at E-5. The City also provides an "In Lieu Fee Schedule" that identifies the requisite fee for individual developments based on their sales price projections. *Id.* at E-20.

Section 17.31.060 permits a developer to propose an alternative means of compliance with the City's Affordable Housing Plan, such as construction of inclusionary units off-site, land dedications for construction of inclusionary units, or a combination of a variety of these options. *Id.* at E-6. Section 17.31.110 provides that the requirements of Chapter 17.31 may be adjusted or waived if the developer demonstrates

to the City Council by the presentation of substantial evidence that applying the requirements of the Chapter would take property in violation of the U.S. or California Constitutions. *Id.* at E-15. Finally, Section 17.84.030(B) provides that a Planning Commission decision can be appealed if filed within 10 calendar days of the date of the decision. SER, Vol. 3, Tab 2, RFJN Exhibit G, Municipal Code Section 17.84.030 ("Appeals"), pp. 0269-0270.

Petitioner did not propose any inclusionary units as part of the proposed project, nor did he choose to pay an in-lieu fee or submit an alternative proposal to the City to comply with the City's affordable housing ordinance. ER, Vol. 2, Tab 3, Complaint, p. 0055, ¶¶ 19 and 20. Petitioner did not seek an adjustment or waiver of these provisions through an appeal to the City Council. Pet. App. B at B-16. Petitioner did not file an action in state court claiming the City's regulation had caused a taking of his property and seeking just compensation. ER, Vol. 2, Tab 3, Complaint, p. 0058, ¶ 33. Instead, Petitioner filed this lawsuit in federal district court seeking *only* declaratory and injunctive relief, *not* compensation, for a Fifth Amendment taking and other alleged constitutional violations.[3] ER, Vol. 2, Tab 3, Complaint, p. 0065.

---

[3] As this Court has repeatedly recognized, the Takings Clause does not prohibit the taking of private property by the government, rather it requires that the landowner be compensated if a taking occurs. *Lingle*, 544 U.S. 528, 537-538; *see also* the Takings Clause of the Fifth Amendment. Petitioner's complaint ignores this basic limitation in seeking solely injunctive and declaratory relief for its takings claim.

As Justice Holmes explained in *Pennsylvania Coal,* and as this Court has unequivocally affirmed for more than eighty-five years, government regulation, by definition, often involves impacts on private property and adjustment of rights for the public good and it is only when a regulation goes *too far* that it will be recognized as a taking. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *Lingle*, 544 U.S. 528, 537-538; *Andrus v. Allard*, 444 U.S. 51, 65 (1979). A plaintiff who seeks to challenge a government regulation on the grounds that it has caused an uncompensated taking of private property may proceed under one of four theories: (1) the regulation requires a property owner to suffer a permanent physical invasion of the property, (2) the regulation deprives the property owner of all economically beneficial use of the property, (3) a general regulatory takings challenge subject to the *Penn Central* framework, or (4) a land-use exaction violating the standards set forth in *Nollan* and *Dolan*. *Lingle*, 544 U.S. 528; *McClung v. City of Sumner,* 548 F.3d 1219, 1225 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 2765 (2009); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978); *Nollan*, 483 U.S. 825; *Dolan*, 512 U.S. 374.

There is no dispute that the first two tests are not applicable in this case because Petitioner did not allege either a permanent physical invasion or the loss of all economically beneficial use of the property.

ER, Vol. 2, Tab 3, Complaint, p. 0050. Traditionally, when the impact of a regulation does not involve a permanent physical occupation or the loss of all economically beneficial use of the property, yet it places burdens on a property owner that a landowner believes "goes too far," courts resort to the *Penn Central* framework, the third test outlined above, to determine whether a taking has occurred. *Lingle*, 544 U.S. at 528-529, 538. Since this case involves the application of a generally applicable, legislatively adopted regulation requiring residential developers to provide a small percentage of affordable units or, in the alternative, pay an in-lieu fee to be used by the City to provide affordable housing, the Court of Appeals correctly found that the *Penn Central* framework is the proper test for determining whether the government had taken Petitioner's property. ER, Vol. 2, Tab 3, Complaint, p. 0053 and Pet. App. E; Pet. App. A at A-4 to A-5.

The final regulatory takings test identified in *Nollan* and *Dolan* is limited in application to special circumstances involving adjudicative land-use exactions. *See Lingle*, 544 U.S. at 538, 546-547. Both *Nollan* and *Dolan* involved Fifth Amendment takings challenges to government demands that the landowners dedicate an easement allowing public access to their property as a condition of obtaining a development permit. *Nollan*, 483 U.S. 825; *Dolan*, 512 U.S. 374. In each case, this Court began with the premise that had the government simply appropriated the easement in question, it would have been a per se

physical taking. *Lingle*, 544 U.S. at 546. If appropriation of an easement would be a physical taking, the government cannot force a landowner to give up the right to receive payment of just compensation for the taking by making dedication of the easement a condition of development. *Id.* at 546-547 (explaining that the situation presented in *Nollan* and *Dolan* involves a special application of the "doctrine of unconstitutional conditions"); *see also McClung v. City of Sumner*, 548 F.3d at 1227; *Nollan*, 483 U.S. at 828; *Dolan*, 512 U.S. at 379-380. This Court has repeatedly held that it is only in these limited, special circumstances involving land-use exactions that the *Nollan* and *Dolan* framework applies. *Lingle*, 544 U.S. at 546-547; *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702 (1999).

In an effort to draw this case within the limited *Nollan/Dolan* framework, Petitioner now argues that the City's affordable housing requirement – that he provide at least 20 percent of the total units as inclusionary units restricted for occupancy by moderate-, low- or very low-income households – is a physical dedication of property. Petition, p. 7. This assertion is utterly false. There is no transfer of property or any property rights from Petitioner to the City if Petitioner complies with the regulation and provides 20 percent of the units which are affordable to middle- to low-income households.

Taking Petitioner's theory to its logical endpoint, any regulation that resulted in a reduction of profits to a developer would be considered a physical

dedication of property. This argument is nonsensical and it would result in the wholesale expansion of the *Nollan/Dolan* test to all regulatory takings situations. The exception, currently limited to special circumstances involving adjudicative land-use exactions, would swallow the rule.

Petitioner also claims that the in-lieu fee option (if a developer chooses not to provide inclusionary units) is an exaction because it is a fee in lieu of a physical dedication and thus should be subject to the "essential nexus" and "rough proportionality" tests of *Nollan* and *Dolan*. ER, Vol. 1, Tab 3, Complaint; Petition, p. 7. Relying on this Court's direction regarding the limited application of *Nollan/Dolan* and the facts of this case, the Court of Appeals correctly held that a generally applicable development fee that does not involve dedication of land or a fee in lieu of land dedication is *not* an exaction; therefore, it is subject to the fact-specific inquiry of the *Penn Central* framework.[4] *McClung v. City of Sumner*, 548 F.3d at 1225; *Lingle*, 544 U.S. at 538-539, 546-547; Pet. App. A at A-4 to A-5.

The Petition contorts and misstates the issues addressed by the Ninth Circuit – the City's regulation does not require a dedication of real property, the regulation is not a land-use exaction, and there has been

---

[4] The Pacific Legal Foundation sought a writ of certiorari on this very question recently in *McClung v. City of Sumner*, but this Court denied that request. *McClung v. City of Sumner*, 548 F.3d 1219, *cert. denied*, 129 S.Ct. 2765 (2009).

no finding by any court that the conditions on development would be struck down under *Nollan* and *Dolan*. For this reason alone, the Petition should be denied.

II. PETITIONER GROSSLY OVERSTATES THE NATIONAL SIGNIFICANCE OF THIS CASE

Petitioner goes to great lengths in his Petition to make the Ninth Circuit's decision seem expansive, ground breaking and controversial when it merely applies settled law. As discussed above, this case does not involve an exaction or a dedication of land. As this Court noted in *City of Monterey*, 526 U.S. 687, 702, it has "not extended the rough-proportionality test of *Dolan* beyond the special context of exactions – land-use decisions conditioning approval of development on the dedication of property to public use." *See also Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 216 F.3d 764, 722 n. 11 (9th Cir. 2000), *aff'd*, 535 U.S. 302 (2002) (noting that the *Nollan/Dolan* framework applies to "land-use decisions conditioning approval of development on the dedication of property to public use" and "is inapposite to regulatory takings cases outside [this] context").

Petitioner cites to two groups of cases from state courts of last resort which he claims conflict on their application of the *Nollan* and *Dolan* test to the issues presented in this case. Petition, pp. 9-14. With the

exception of one case from Texas,[5] decided before the *Lingle* decision, *all* of the cases cited by Petitioner are in concert on the issue which was actually presented in this case – the *Nollan/Dolan* test *does not apply* to a generally applicable, legislatively adopted regulation that does not involve dedication of land or a fee in lieu of land dedication. *See Twin Lakes Development Corp. v. Town of Monroe*, 1 N.Y.3d 98, 801 N.E.2d 821 (N.Y. 2003), *cert. denied*, 541 U.S. 974 (2004) (*Dolan* test applies only when the government demands either a physical dedication or a fee in lieu of a physical dedication); *Trimen Development Co. v. King County*, 124 Wash.2d 261, 877 P.2d 187, 191 (Wash. 1994) (same); *City of Olympia v. Drebick*, 156 Wash.2d 289, 126 P.2d 802 (Wash. 2006), *cert. denied*, 549 U.S. 988 (2006) (same); *Smith v. Town of Mendon*, 4 N.Y.3d 1, 822 N.E.2d 1214 (N.Y. 2004) (a regulation which restricts an owner's use of his property or places conditions on development without a dedication of property to public use is not an exaction and *Nollan/Dolan* does not apply); *Ehrlich v. City of Culver City*, 12 Cal.4th 854, 911 P.2d 429, 444 (Cal. 1996), *cert. denied*, 519 U.S. 929 (*Nollan/Dolan* is not applicable to generally applicable development fees or assessments from legislative processes).

The cases Petitioner claims are in conflict with these decisions in actuality are completely consistent

---

[5] *Town of Flower Mound v. Stafford Estates Ltd. Partnership*, 135 S.W.3d 620, 635 (Tex. 2004).

with both other state court opinions and the Ninth Circuit decision in this case as to this issue. *See Sea Cabins on Ocean IV Homeowners Ass'n, Inc. v. City of North Myrtle Beach*, 345 S.C. 418, 548 S.E.2d 595 (S.C. 2001) (*Nollan/Dolan* only applies to situations involving physical dedications of property); *Krupp v. Breckenridge Sanitation District*, 19 P.3d 687 (Colo. 2001) (*Nollan/Dolan* test is limited to the narrow set of cases where a permitting authority, through a specific, discretionary adjudicative determination, conditions continued development on the exaction of private property for public use); *Home Builders Ass'n of Central Arizona v. City of Scottsdale*, 187 Ariz. 479, 930 P.2d 993 (Ariz. 1997), *cert. denied*, 521 U.S. 1120 (*Dolan* test does not apply to a generally applicable legislative decision by the city); *McCarthy v. City of Leawood*, 257 Kan. 566, 894 P.2d 836 (Kan. 1995) (*Dolan* test does not apply to imposition of an impact fee to address traffic impacts from development when fee is not related to a dedication of land); *Waters Landing Ltd. Partnership v. Montgomery County*, 337 Md. 15, 650 A.2d 712 (Md. 1994) (*Dolan* inapplicable because the challenged regulation was imposed by legislative enactment, not by adjudication, and the tax did not require landowners to deed portions of their property to the county). Petitioner concedes this fact later in his petition when he admits that *Town of Flower Mound*, 135 S.W.3d 620, 635, is the *only* decision from a state court of last resort or a circuit court to expand *Nollan/Dolan* beyond the context of adjudicatory land-use exactions and apply it to legislatively imposed conditions such as the

affordable housing requirements challenged here. Petition, pp. 20-21.

Petitioner's argument is illusory. There is simply no split or conflict between the Ninth Circuit's decision in this case and decisions from state courts of last resort, nor is there any conflict between the Ninth Circuit's decision and decisions of this Court. *See* Petition; *see also West Linn Corporate Park, L.L.C. v. City of West Linn*, 349 Or. 58, 240 P.3d 29 (Or. 2010). Therefore, there is no jurisdictional basis for the Petition under Rule 10 of the Rules of the Supreme Court of the United States.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD R. RUDNANSKY
JULIA A. BOND
DAWN A. MCINTOSH
Counsel of Record
MEYERS, NAVE, RIBACK, SILVER & WILSON

Attorneys for Respondents City of Cotati and Planning Commission of the City of Cotati